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Ontario

The Pension Commission of Ontario

When Your Pension Plan Winds Up:

What it Means to Members

One fact of life is that nothing stays the same. So too with corporate life. There are times when selling a business, restructuring the organization and downsizing operations are necessary responses to changing market conditions and corporate fortunes. These events may result in workers being terminated or laid-off. When such events occur at a company with a pension plan and all members of the pension plan are terminated, the pension plan also terminates *or winds up.*

If you were recently terminated from employment and were a member of the company pension plan or, your company was sold and the purchaser didn't have a pension plan or, the employer (sometimes jointly with employees) decided to discontinue the pension plan, you probably have some questions about your plan and the safety of your benefits.

This material has been developed by the Pension Commission of Ontario (the PCO) and should be regarded only as a general guide to pension plan wind ups. It focusses on the reasons for a plan wind up, the security of members' pension contributions and benefits, and the process of completing a plan wind up.

*The information should not be construed as legal advice and is not a substitute for the **Pension Benefits Act**, R.S.O. 1990, the Regulation and the policies and practices of the PCO as they may be from time to time. Neither should the information be considered a substitute for the terms of the member's pension plan.*

I General information about pension plans

Reasons for establishing pension plans

Pension plans are generally long-term benefit programs. Historically, plan sponsors established them because the employer expected to be in business indefinitely and wanted an incentive to attract and retain employees. The reasons for establishing pension plans today are based on social objectives and business considerations. The social objective reflects workers' expectations to have sufficient lifetime (retirement) income. The sponsor, generally either an employer or union, supports that objective when a pension plan is established. Despite substantial start-up and operating costs, the sponsor is able to satisfy certain business needs and obtain tax assistance. As a result, the plan operates for the benefit of members until an event interrupts business operations to such a degree that terminations or business circumstances warrant a wind up of the pension plan.

Types of pension plans

There are basically two types of pension plans - defined benefit and defined contribution (or money purchase) pension plans. They operate and function very differently. If you are a member of a defined benefit pension plan, you will be advised annually, as to **the amount of pension benefit you can expect to receive at your normal retirement age** which is generally age sixty-five. Defined benefit pension plans are usually described as being either final average or career average earnings or, flat benefit pension plans. This refers to the formula (generally a combination of salary and length of service) used to calculate the pension benefit. For instance, it may be expressed as 1.5 per cent of final average earnings per year of service.

The practical reasons for establishing pension plans today are based on social and business considerations. The key objective is to provide workers with sufficient lifetime income.

The defined contribution or money purchase pension plan, by contrast, **does not provide** a defined amount of pension benefit payable at normal retirement age. Members in this type of plan do not know until they actually retire what level of pension benefits they will receive. **A defined contribution plan specifies the level of contributions that are made.** An account is maintained in the pension plan for each member and the member generally selects investment options from among several choices. When the member is ready to retire, the member will receive a pension benefit based on the total contributions plus investment earnings.

In addition, both types of pension plans are either contributory or non-contributory. When the employer and employee contribute, it is called a **contributory** plan; when the employer alone contributes, the plan is said to be **non-contributory**.

Why pension plan wind ups occur

Wind ups occur for a variety of reasons. Often, a wind up is caused when all or a significant number of members have ceased employment. When all employees cease employment, the pension plan must be terminated or **wound up**. This is called a full wind up and is required by pension law. When a significant number of pension plan members are terminated, the pension plan will be **partially wound up**. (Those members unaffected by the restructuring, who continue to be employed following the downsizing, are not included in the partial wind up and their membership continues without change.) Some reasons for pension plan wind ups include:

- the employer has decided not to operate a pension plan and ceases to remit contributions to the pension fund;
- the employer fails to make contributions to the pension fund as required by pension law;
- there has been a plant closure or downsizing of operations and a significant part of the business at a specific location is discontinued (this may require either a partial or full wind up);
- a significant number of pension plan members cease to be employed as a result of the discontinuation of all or part of the business or reorganization of business operations;
- the employer has sold all or part of the business or the assets of the business to a purchaser, and the purchaser does not provide a pension plan for the members of the pension plan who become employees of the purchaser; and
- the employer is bankrupt (or insolvent).

Most employers involved in these situations will voluntarily wind up the pension plan. In cases where the employer does not take steps to wind up the plan voluntarily, the Pension Commission of Ontario may order the wind up to comply with the requirements of Ontario's pension law. The purpose for the mandatory wind up is to protect the interests of pension plan members and ensure the safety of their pension benefits.

The date of plan wind up or partial plan wind up officially marks the end of pension plan operations for affected members. The declaration of a full or partial wind up also signals the beginning of a regulatory review process required under pension law in order that pension plan activities can be concluded and pension benefits paid out. *Pension law sets out the main requirements that must be met through the review process to ensure that all pension benefits and entitlements earned by members will be paid.*

II Pension law and the Pension Commission of Ontario: How do they fit in?

Pension law establishes minimum standards for entitlements to benefits, funding of the benefits and day-to-day plan administration. Most pension plans in Canada are governed by provincial pension legislation and must be registered with the provincial regulator in order to operate legally. (Pension legislation differs from province to province.) Some pension plans in nationally regulated industries such as banking, pipelines and telecommunications are regulated by the federal government. For people who are members of Ontario-registered pension plans, Ontario pension law applies and is administered by the Pension Commission of Ontario. The Commission is responsible for ensuring compliance with Ontario's Pension Benefits Act.

In 1987, Ontario's pension legislation was substantially revised and new measures were introduced to strengthen the employment pension system in Ontario. The reforms improved members' rights to benefits and the way benefits are funded. It gave members rights and entitlements such as access to more information about their pension plan. The reforms modernized the pension system and put in place safeguards *to minimize risk to members and retirees. These measures foster confidence that pension benefits will be delivered as promised and that member rights and entitlements will be honoured.*

It is important for plan members to learn as much as possible about their pension plan – after all, their retirement security is at stake. Informed members are among the first to become aware of possible breaches of pension law. If a breach is suspected, the Pension Commission should be consulted.

It is helpful for members to be aware of the distinction between legislated minimum standards which are discussed here and specific provisions available under the terms of their plan.

Pension law offers protection

Ontario pension law establishes minimum standards to which members are entitled in the areas of benefits, funding and member rights and entitlements. Members should keep in mind that plan sponsors can and frequently do offer more generous provisions than the minimum standards. At wind up, the key statutory benefits and entitlements of particular interest to members are vesting, locking-in and "growing-in" to benefits.

III Ontario's key statutory benefits applicable on wind up

Vesting

Vesting gives the member of a pension plan a right to a pension benefit payable at the normal retirement date. It often is referred to as a deferred pension if the member is years away from his or her normal retirement date. Vesting occurs when a member satisfies the minimum requirements of pension law. ***For benefits earned prior to 1987***, a member has a right to a pension benefit or deferred pension on termination if the member is forty-five years old and has ten years of continuous service. ***For benefits earned after 1987***, vesting occurs when the member has completed two continuous years of plan membership. **However, on wind up all members become fully vested and are entitled to a pension benefit (regardless of whether they have satisfied the age, service and membership requirements under the legislation and plan provisions).**

Members should be aware of the distinction between legislated minimum standards and the specific provisions under their pension plan.

Locking-in

Locking-in means that the vested pension benefit earned by the member ***must be used to provide a stream of retirement income at early or normal retirement date for the lifetime of the member and spouse.*** In a situation other than wind up, locking-in generally occurs at the same time as vesting. On wind up, members become fully vested, but benefits may not be locked-in necessarily. The only benefits locked-in are those that would have been locked-in had the wind up not occurred. Members should check their pension plan provisions to determine whether the plan locks-in pension benefits on wind up.

If a member who is vested and locked-in (and who is a number of years away from retirement) exercises a right at termination to transfer the value of the benefit to an RRSP, that RRSP must be locked-in. This "locked-in" condition imposed by pension law means that the monies can ***only*** be used to purchase lifetime retirement income in the form of a life annuity. (An annuity is a product that provides monthly income for the remainder of a person's life and is purchased from an insurance company.)

The main advantage of locked-in pension benefits is that the member is assured of a regular income after retirement. It is also worth noting that pension benefits can not be seized by creditors under pension law.

Members can grow-in to benefits on wind-up

Ontario members of defined benefit plans registered in Ontario should be aware that pension law offers an additional protection on wind up. The following highlights what members, **who have already satisfied a combination of age, service and membership requirements as of the wind up date** (where age plus years of continuous employment or plan membership equals at least 55 at the wind up date – ***rule of 55***) are entitled to receive:

- a pension in accordance with the terms of the pension plan if under the pension plan the member is eligible for immediate payment of the pension benefit;
- a pension in accordance with the terms of the pension plan to commence at the earlier of the plan's normal retirement date or the date the member would be entitled to an actuarially unreduced pension under the pension plan had the plan not wound up and if membership had continued to that date; or
- an actuarially reduced pension in the amount payable under the terms of the pension plan to commence on the date the member would be entitled to a reduced pension had the plan not wound up and if membership had continued to that date.

Such grow-in benefits are always locked in. An actuarially reduced pension means that the amount of monthly pension benefit is lower, but equivalent – in terms of the total amount to be paid over the lifetime of the member (on an actuarial basis) – to pay a pension benefit over a longer period of time.

IV Pension plan provisions

Frequently, Ontario-registered pension plans offer more generous provisions than the minimum standards required by pension law. Some provisions offered by pension plans are not described by pension legislation. For instance, certain pension plans may include additional provisions such as bridging benefits. These are not legislated minimum standards; generally, they are made available by the employer, or may be included in the collective agreement. (A bridging benefit sometimes is offered as a plan provision for members with long service which, on early retirement, provides income for the period from the date the member takes early retirement to the date when the member would be entitled to actuarially unreduced Canada Pension Plan retirement benefits and/or Old Age Security.)

On wind up, such a plan provision may be offered to members who meet the ***rule of 55*** and have at least ten years or more of service at the date of wind up.

The reader should remember that this material informs members generally about defined benefit and defined contribution pension plans. At wind up, principles of pension law apply similarly to both but the wind up review process conducted by the the Commisison differs slightly. To get specific details of all your benefits and entitlements (that is, the statutory minimum requirements plus plan provisions) please refer to the member booklet for your plan or contact your Administrator or union representative.

V Purpose of the wind-up process: protection of members' benefits

When a pension plan wind up is announced by the employer, or ordered by the Pension Commission of Ontario, the Administrator is legally responsible for administering all aspects of the pension plan and this extends through the wind up phase. The Administrator must file with the Commission a *wind-up report*, setting out all relevant information about the pension plan.

The *wind-up report* is a key document containing information that is subject to scrutiny by the Pension Commission. Typically, it includes information about the funded status of the plan and the methods of allocating and distributing assets.

When the facts are verified and all issues are resolved, the Superintendent of Pensions (the chief administrative officer of the Commission) can approve the wind-up report. This indicates completion of the wind-up process from the regulatory standpoint. The Administrator then can pay out pension benefits (benefits accrued in accordance with the terms of the pension plan) or refund contributions owed to members.

A closer look at the wind-up process

There are seven stages in the wind-up process from the regulatory standpoint:

1. The employer or the superintendent of pensions declares that a wind up will occur

The wind-up report is a key document containing information that is subject to scrutiny by the Pension Commission of Ontario.

When the employer declares that a full or partial wind up will occur, the employer generally indicates an effective date for the wind up which is subject to review by the Pension Commission. The Administrator must prepare a wind-up notice to members which is a written explanation of the sponsor's intentions. In a non-contributory plan, employer contributions cannot cease until the wind-up notice is given to all members and former members. Similarly, when the employer ceases to make contributions to the plan, the employer must notify members that the plan is winding up and specify the proposed effective date of the wind up.

The Superintendent of Pensions may specify the effective date of wind up in circumstances where a company undergoes stages of downsizing or discontinuance of operations. If such member terminations are considered to be regular terminations that is, unrelated to the wind-up process, these benefits would not be calculated according to the advantageous wind-up provisions of pension legislation. Occasionally, the Superintendent will determine the effective date if the employer does not meet the requirements of the legislation.

If an employer simply ceases making contributions to the plan, under normal circumstances, this results in a plan wind up. One exception to this rule is the case where a successor pension plan has been established. Successor plans often are established when there has been a sale of a business and membership continues in a plan with the new company. Sometimes an employer will create a successor pension plan for all employees if there were previously two pension plans for two different classes of employees (salaried and hourly workers, for instance). In this case, the successor plan is the plan to which the employer begins to contribute on behalf of the same employees. Even though no contributions are being made to the original plan, it is not wound up.

2. The wind-up report is prepared

For defined benefit plans, the Administrator generally hires actuarial consultants to prepare a wind-up report to confirm all required and relevant facts about benefit formulae, membership and funding. Only an actuary can certify the funded status of a defined benefit pension plan, that is, whether there are sufficient assets in the pension plan to pay all liabilities. For defined contribution plans, an insurance company generally holds the assets and prepares the wind-up report.

The wind-up report must be filed with the Pension Commission within six months of the effective date. If plans are large or complex, preparation of the wind-up report may take longer. The deadline for filing the wind-up report may be extended in such cases.

3. The employer files the wind-up report with the Pension Commission

Commission staff review the wind-up report and compare it to information contained in the plan documents. Staff determine whether the suggested asset allocation method and the actuarial method used for calculating pension benefits meet statutory and regulatory requirements.

If the wind-up report is incomplete in any way, Pension Officers will discuss the matter with the Administrator and additional information may be requested. Alternatively, the Administrator may be instructed to solve any problems. When these are resolved, the wind-up report can be approved.

4. Member option statement

The member will receive an option statement explaining the benefit and transfer options to which the member is entitled. Members have ninety days to make their choice about transfer options. Depending on the option selected, the Administrator has up to thirty days to complete the transfer.

Options available to members and former members on wind up include transfer to a locked-in RRSP, a deferred or immediate life annuity, or transfer of pension funds to another plan to which the individual may be eligible for membership providing that plan will accept the funds. If the member or former member is already receiving benefit payments, fewer options may be offered.

As always, members should give very careful consideration to their transfer choice, since once the election is made it cannot be changed. The Administrator will act on the member's choice once written direction is received. If the member fails to make an election or fails to notify the Administrator of the election, the Administrator may purchase for the member a deferred or immediate annuity depending on the member's age.

5. Approval of the wind-up report by the Pension Commission

When the Superintendent of Pensions is fully satisfied that the information has been reviewed and all issues have been resolved, the wind-up report is approved, and pension plan benefits may be distributed.

6. The final settlement to members

When the Administrator is advised of the Superintendent's approval, the distribution of benefits to members can begin according to the options selected. On approval of the wind up by the

Superintendent of Pensions and receipt of the member's election, the Administrator in most instances has 30 days to comply with the member's election.

If the Administrator does not comply with a member's elections within the stipulated time period, members should contact the Administrator to determine the reason for the delay. There may be valid reasons for a delay and the Administrator will likely indicate a date when the election may be completed. If members are concerned, however, they may contact their union or the Pension Commission of Ontario.

If a surplus exists on wind-up

The wind-up report may indicate that some plan assets remain in the pension fund after all members receive the benefits to which they are entitled and all other plan liabilities have been satisfied. A surplus is said to exist when there is more money in the plan than is needed to pay all pension benefits earned by members. (This is determined by an actuarial valuation of pension plan assets and liabilities.)

The employer is required to indicate in the wind-up report how the assets, including any surplus assets, will be allocated and distributed. If the surplus funds are to go to the members, the amount of surplus is identified in the wind-up report and members' benefits are increased to the extent that they can be funded by surplus. (These are also subject to limitations on maximum benefits provided under the federal Income Tax Act.)

Employers seeking surplus withdrawal or a sharing arrangement must obtain the consent of all or two-thirds of members... and the consent of the PCO to the refund to the employer.

If the employer is seeking a refund of all remaining plan assets or wishes to share the surplus with members, the employer must make a separate application to the Commission for consent to the refund to the employer. The application for surplus is dealt with as a final step in the wind-up process following the Superintendent's approval of the wind-up report and distribution of the benefits to members.

7. The surplus application

If an employer is making application to the Commission for withdrawal or sharing of surplus, pension law requires that the Administrator provide notice to all members and affected parties. The notice references all provisions in the plan text related to surplus since the plan's inception (this includes surplus provisions in any prior plans, if applicable). The notice must outline the employer's proposal for dealing with the distribution of surplus. The proposal may offer a portion of the surplus to the members in a sharing arrangement, or it may be simply a proposal to pay all surplus to the employer. A member consent form to the employer's proposal generally accompanies the notice.

Members should be aware that employers seeking surplus withdrawal or a sharing arrangement must obtain either the consent of all or two-thirds of the members depending on when the notice of wind up was filed with the Pension Commission.

New rules apply for surplus withdrawal from wound-up pension plans

Effective December 18, 1991, new rules govern the withdrawal of surplus monies from pension plans winding up after that date. The regulation, in effect until December 31, 1994 requires employers and employees to negotiate surplus distribution from a plan that is winding up. Surplus withdrawal will be allowed where the plan permits and the employer obtains the

written agreement of the bargaining agent or, if there is no bargaining agent, **agreement of at least two-thirds of plan members**. The Commission will determine the extent to which the written agreement of former plan members (retired, deferred or terminated) and other persons will be required. This approach, with its emphasis on encouraging negotiation and agreement between sponsors and members, is designed to reduce the need for costly court action to determine entitlement and ownership of surplus monies.

The pre-December 18, 1991 rules are available for all plans where the Administrator had given notice of proposal to wind up the plan before that date. These rules allow for the payment of surplus on wind up only if: the surplus monies were used for the benefit of members and other beneficiaries of the plan or, the employer obtained the written agreement of 100 per cent of members and certain other beneficiaries or, the employer obtained a court order authorizing payment of surplus. As always, the consent of the Pension Commission to the refund to the employer is required.

VI SPECIAL WIND UP SITUATIONS

Certain pensions may be paid out before the wind up is complete

The general rule is that no monies may be paid from the fund while the wind up is in progress. However, there are two exceptions: retirees continue to receive their pensions and members who reach early retirement or retirement age after the wind up date may request that payment of their pension benefits start *before* the wind-up report is approved.

Here's how you can start payment of your pension benefit during a wind up: members who wish to take early or normal retirement should make their request for benefits to be paid in writing to the Administrator. The Administrator will then write to the Pension Commission indicating that certain members are entitled to receive immediate pensions. These requests are always given priority, and in the majority of cases, approval of these benefit payments will be given. The pension will be paid to the member in a form specified by the plan text which is generally an annuity if the plan is winding up in full. Members should be aware that they may forfeit other options, if they elect to take an immediate annuity. As always, members should carefully consider their options.

When the company sponsoring the pension plan is insolvent

Sometimes pension plans are ordered to be wound up by the Pension Commission because the company is insolvent or bankrupt. Former members who still have a benefit under the plan and active members of such plans should be aware that pension monies are required by law to be kept separate from corporate funds. In such cases, the Superintendent of Pensions will usually appoint a third party Administrator to conclude the business of the pension plan and prepare the documentation for the regulatory review process.

When the insolvent company cannot pay the pension benefit earned by members

There are instances when an insolvent company which had operated a defined benefit pension plan cannot pay the pension benefit promised because there are insufficient assets in the pension fund to meet the plan liabilities and no other source of funds is available. Following a review and verification by the Pension Commission, the Pension Benefits Guarantee Fund (the PBGF) may be declared to apply. The PBGF, established in 1981, is administered by the Pension Commission and applies to defined benefit pension plans but not to defined contribution or multi-employer plans. (A multi-employer pension plan is one that is established, administered and funded for employees

of two or more employers. Such a plan is generally established by an agreement, statute or municipal by-law.)

The PBGF is funded through fees levied on every Ontario-registered defined benefit pension plan. If a claim is processed, the PBGF guarantees payment of certain defined benefits and protects those benefits related to Ontario employment and service. The guaranteed benefits are subject to certain limitations.

VII FREQUENTLY ASKED QUESTIONS BY MEMBERS ABOUT WIND UPS

If I want to review a copy of the wind-up report filed with the Pension Commission, or wish to ask questions, what should I do?

Disclosure of information is a key principle of pension reform which established a member's right to information about the pension plan. In addition to the information members are entitled to receive regularly, members are entitled once a year to inspect and make copies (for a reasonable fee) of all prescribed documents relating to the pension plan and fund. Normally, Administrators are in the best position to answer members' enquiries about the pension plan since they have the legal responsibility for administering all aspects of the pension plan and for making information about the pension plan and benefits available to plan members.

Locking-in guarantees that pension benefits will only be used to provide a lifetime income at early or normal retirement date.

If a member wishes to view or copy any prescribed documents including the wind-up report, a written request should be directed to the Administrator first. (Members should be aware that they are not entitled to view personal information relating to other plan members.) Members may view the documents at a company location convenient to them or ***members may make an appointment*** with the Pension Commission to view documents filed with the Commission. (If the member wishes to make copies of documents, a photocopying fee will be charged by the Commission.)

When members are represented by a trade union, an authorized agent is also entitled to review and make copies of these documents. Union members may also get assistance from their union representative. However, a member does not have to be represented by a union in order to allow an authorized agent to review and make copies of prescribed documents.

What is a locked-in RRSP?

The concept of locking-in as a safeguard under pension law was discussed earlier. Locking-in guarantees that pension benefits will only be used to provide a lifetime retirement income at early or normal retirement date. Locked-in monies may not be used for any purpose other than providing an immediate or a deferred pension.

One way of transferring locked-in pension funds from the pension plan is through a particular type of RRSP (Registered Retirement Savings Plan). This locked-in RRSP is a means for holding locked-in pension funds which are earmarked for the sole purpose of providing retirement income. The transfer moves pension monies out of the pension fund and into a retirement savings vehicle controlled by the member. In this way, the locked-in RRSP acts as a tax sheltered account for the funds until the member may purchase a life annuity.

A former member can select any type of locked-in RRSP – for example, savings account, guaranteed rate, self-directed – at any financial institution or insurance company that will lock-in the money and administer the RRSP in accordance with the provincial pension legislation and federal tax rules. The type of RRSP that the member selects is a personal decision.

Pension law requires that when the locked-in RRSP holder is ready to take retirement, all funds in the locked-in RRSP must be used to purchase a life annuity from an insurance company. The annuity can be purchased no earlier than age fifty-five and no later than the end of the year in which the member turns seventy-one.

What is an annuity?

An annuity is a contract purchased from an insurance company providing the annuitant (the retiree) with a series of regular, usually monthly, pension payments for the remainder of the annuitant's life.

The size of the annuity payments will depend on several factors: the funds available for purchasing the annuity, the age of the member, whether the annuity provides for survivor benefits, any guaranteed number of payments, and prevailing interest rates at the time the annuity is purchased.

I was forty years old and had twelve years of service when my plan wound up on December 31, 1991. What portion of my benefit is vested and locked in?

The benefit for service on and after January 1, 1987 – and any improvement to pre-1987 benefits made after January 1, 1987 – is vested and locked in under normal termination rules (i.e. two years continuous membership in the plan). The benefit for service prior to January 1, 1987 would be vested under normal termination rules (i.e. forty-five years of age plus ten years of service), but becomes vested because of pension legislation wind-up rules. However, this portion of the total benefit is not locked in unless the terms of the plan lock in these benefits.

I'm out of work and I need my pension money now. I'm young and don't want to wait until retirement age for my money. Why can't I get it now?

Locking-in is a fundamental principle of pension law. It is a way to ensure that workers who were members of employer-sponsored pension plans have a source of income at retirement. Among other things, locking-in protects your retirement income from creditors. It also ensures that former members won't spend money today that is needed in retirement. Members should not think of locked-in pension monies as a special fund for a rainy day. Locked-in pension monies can only be used for retirement income.

I terminated my employment several years ago and left my money in the company pension fund. What happens if my plan winds up before I can collect my pension?

When the plan is winding up, all members and deferred members, such as you, will receive the wind-up notice and option statement setting out all transfer options. When the wind-up report is approved, the Administrator will distribute all plan assets to members and deferred members of the plan.

It is important that deferred members who have left money in a former employer's plan advise the Administrator in writing of address changes so that member records are current. If a pension plan wind up is declared and the deferred member cannot be located, the deferred member may lose the opportunity to exercise any transfer options.

I've heard that my plan does not have enough assets to cover benefits promised to members. How does this happen and what does it mean for the plan members?

There are several reasons why a defined benefit plan may have a deficit. (If the pension plan is ongoing it is called an unfunded liability. If the pension plan is wound up it is called a solvency deficiency. Under these different circumstances, there are separate approaches to dealing with the deficit.)

The most common reasons for insufficient assets are poor investment performance, higher than expected worker wage increases and, in certain instances, union negotiated plans may bargain for improved benefits (and the sponsor has not had sufficient time to fully pay for these improvements). The legislation allows for benefit improvements to be funded over a certain number of years.

If a wind up occurs before the benefits are fully funded, the plan will be considered to have a deficit. The legislation dictates the length of time a sponsor has to make up this type of deficit.

In an insolvent company, members of a defined benefit plan with insufficient assets to provide the full benefit promised to them have some protection through the Pension Benefits Guarantee Fund. The Pension Commission administers the fund which will pay out a certain amount of benefit to a level specified in the legislation.

If the pension plan is winding up and there are insufficient assets, some members can receive monthly pension payments if they are retired or are eligible to retire.

My company is still operating, but the pension plan is winding up. What happens to my pension benefit if the plan does not have enough assets?

Some members can receive monthly pension payments if they are retired or eligible to retire. However, in some cases the pension may be reduced until the deficit is fully funded.

In a company that continues to operate, the employer is required to fund the deficit over a five year period or less. Until the deficit in the plan is fully funded (that is, there are adequate assets to pay out liabilities), lump sum payments from the pension fund can only be made to the extent they are funded. For instance, if the plan is 75 per cent funded, the member may receive only 75 per cent of pension benefits payable. The remaining pension benefit will be paid when the deficit is fully funded.

What happens if the company does not continue to operate?

There are two possibilities in a company that does not continue operating and the pension plan is winding up. The first is that there are sufficient assets to pay the pension benefits promised. In this case, when the wind up process is complete and approval to the wind up report is given, pension benefits and deferred pensions can be paid.

If a defined benefit pension plan winds up and there are insufficient assets to pay the pension benefits promised, a review by the Pension Commission may indicate that a claim against the Pension Benefits Guarantee Fund may be appropriate in the circumstances. Certain pension benefits (some statutory limits on these benefits may apply) would be paid.

Who pays the costs of winding up a plan?

Certain wind-up costs may be paid from the pension fund if the terms of the plan permit it. If the plan documents do not deal with the payment of wind-up costs, Ontario's pension legislation permits expenses to be paid from the fund as long as they are reasonable administrative expenses.